

Heller Ehrman LLP**Facsimile Transmittal**

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To: U.S. Patent & Trademark Office – FINANCE DEPARTMENT
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From: James A. Fox, Reg. No. 38,455 on behalf of Daphne Reddy No. 53,507
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No. of Pages: 2 (including cover)
Date: January 25, 2008

Re: U.S. Patent Application Serial No. 09/990,438
Filed: November 14, 2001
Inventors: David Botstein et al.
Our Reference: 39780-2730 P1C3

Dear Sir or Madam:

We write to your Office in order to request a refund for the Notice of Appeal, which was filed electronically in the U.S. Patent & Trademark Office on January 24, 2008, for the above-identified patent application.

Per page 2 of the Final Office Action mailed October 24, 2007 Examiner Gary Nickol stated that "the previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal." To avoid abandonment of the application we filed the Notice of Appeal, and paid the fee of (\$510). However, we would now like to request a refund of the Notice of Appeal fee. Attached is a copy of page 2 of the Final Office Action mailed October 24, 2007 mentioned above.

Please credit Deposit Account No. 08-1641 (referencing Attorney's Docket No. 39780-2730 P1C3).

We appreciate your assistance with this matter.

SV 2329351 v1
1/25/08 2:48 PM (39780.2730)

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Beijing Hong Kong London Los Angeles Madison, WI New York San Diego San Francisco Seattle/Tacoma Singapore Washington, D.C.
PAGE 1/2 * RCVD AT 1/25/2008 7:50:52 PM [Eastern Standard Time] * SVR:USPTO-EFAXF-4/13 * DNIS:2736500 * CSID:650 324 0638 * DURATION (mm-ss):01-26

Application/Control Number: 09/990,438
Art Unit: 1646

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DETAILED ACTION***Withdrawal of Finality***


In view of the Appeal Brief filed on 7/19/07, PROSECUTION IS HEREBY REOPENED. A reinstated grounds of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:



GARY B. NICKOL, PH.D.
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

Claim Rejections - 35 USC §§ 101 and 112, first paragraph

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 124-125 and 129-131 remain rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a credible, specific and substantial asserted utility or a well established utility for the reasons set forth in the previous Office action.

Electronic Patent Application Fee Transmittal

Application Number:

09990438

Filing Date:

14-Nov-2001

Title of Invention:

Secreted and transmembrane polypeptides and nucleic acids encoding the same

First Named Inventor/Applicant Name:

David Botstein

Filer:

Panpan Gao/Dianna Diaz

Attorney Docket Number:

10466/201

Filed as Large Entity

Utility Filing Fees

Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Petition-revive unavoid. abandoned appl	1452	1	510	510
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Adjustment date: 02/12/2008 SDIRETA1
03720/2007 INTEFSW 00001032 081641 09990438
02 FC:1401 500.00 CR

02/12/2008 SDIRETA1 00000038 081641 09990438
01 FC:1401 510.00 DA

Adjustment Date: 02/12/2008 SDIRETA1
01725/2008 INTEFSW 00004229 081641 09990438
01 FC:1452 510.00 CR

Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
Miscellaneous:				
Total in USD (\$)				510